

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PLAN FOR THE APPOINTMENT OF
PRO BONO COUNSEL
(revised April 2006)

The United States Court of Appeals for the Second Circuit hereby adopts this Plan to govern the appointment of pro bono counsel to *pro se* appellants with meritorious or complex appeals who are ineligible for representation pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, and to assist the Court in processing pro se civil appeals more equitably and efficiently.

Statement of Policy:

The goal of this Plan is to provide pro bono counsel to *pro se* parties in civil appeals in which briefing and argument by counsel would benefit the Court's review. Pro bono counsel may be appointed on an appellant's motion for the appointment of counsel or *sua sponte* by the Court, but all cases selected for the appointment of pro bono counsel must be reviewed by a panel of judges for a determination of the propriety of such appointment. Only cases presenting issues of first impression, complex issues of fact or law, or raising potentially meritorious claims or otherwise warranting further briefing and oral argument will be selected for the appointment of counsel.

Cases for which pro bono counsel are appointed include a broad range of legal issues. While a significant percentage of the cases are prisoner civil rights, many other civil issues are included, such as those involving labor and employment, discrimination, social security, immigration, and tax law. The Court recognizes that because the Plan does not provide for compensation or reimbursement attorneys serving on the Pro Bono Panel are rendering a public and social service of the greatest importance. The program depends upon the cooperation and volunteer efforts of the private bar, and on the Court's commitment to providing an opportunity for service to participating attorneys.

Pro Bono Panel

A. Maintaining the Pro Bono Panel List

The Director of the Office of Legal Affairs, under the direction and supervision of the Chief Judge or the Chief Judge's designee, shall maintain the list of the Pro Bono Panel members. The list of Pro Bono Panel members shall include the name of each attorney and the current business and e-mail addresses and telephone number of the attorney. Attorneys accepted for service on the Pro Bono Panel must notify the Director of the Office of Legal Affairs, in

writing, within 48 hours of any changes in business address, business telephone number, e-mail address, or employment.

B. Panel Appointments

Appointments to the Pro Bono Panel shall be made by the Court upon appropriate recommendation from the CJA and Pro Bono Committee of this Court.

C. Applications

1. Submission Requirements

All private attorneys seeking to be included on the Pro Bono Panel must submit to the Director of the Office of Legal Affairs an application, a resume, and three writing samples, preferably appellate briefs on which the attorney was the prime author. Applicants must be admitted to and members in good standing of the Bar of the Second Circuit and have at least three years of appellate experience. Applications for membership shall be submitted on the Court's form for Application for Appointment to the Pro Bono Panel, available on the Court's website.

The Court will set and publicize an annual application period for appointment to the Pro Bono Panel.

2. Term of Appointment

Pro Bono Panel members shall serve for a term not to exceed three years, but may be removed by the Court prior to the expiration of their term (*See* Section D, Removal). Appointments to the Panel shall be made so that the terms of approximately one-third of the Panel members expire at the conclusion of each Term of Court. Upon expiration of the term of a Pro Bono Panel member, the Pro Bono Panel member must reapply for membership if he or she wishes to continue as a member of the Pro Bono Panel. Panel members will be selected on the basis of demonstrated qualification, skill and dedication. Because of the limited size of the Pro Bono Panel, the Court will not be able to appoint every qualified applicant to the Panel, but the Court will make an effort to rotate membership on the Pro Bono Panel in order to ensure that new applicants are given an opportunity to serve.

D. Removal

1. A Pro Bono Panel member may be removed from the Pro Bono Panel

whenever the Court, in its discretion, determines that the member has failed to fulfill satisfactorily the obligations of Panel membership, including the duty to afford competent counsel, or has engaged in other conduct that renders inappropriate his or her continued service on the Pro Bono Panel. The Court may remove a Pro Bono Panel member for refusing three times to accept a pro bono appointment during the membership term.

2. A Pro Bono Panel member will be suspended automatically if the member is disbarred or suspended by any state or federal bar or arrested for, charged with, or convicted of a crime. The Panel member has an affirmative obligation to notify the Clerk of Court, in writing, within 24 hours, of any such suspension, disbarment, arrest, filing of criminal charges or conviction.

E. Non-Panel Member Appointments

When the Court determines that the appointment of an attorney who is not a member of the Pro Bono Panel is appropriate in the interest of justice, judicial economy, or some other compelling circumstance warranting such appointment, the attorney may be admitted to the Pro Bono Panel *pro hac vice* and appointed to represent the pro se client.

F. Pro Bono Appointment Procedure

Once the Court has entered an order directing that pro bono counsel be appointed, counsel will be selected from the Pro Bono Panel by the Director of the Office of Legal Affairs. Once counsel accepts appointment in the case, an order will be entered appointing the Panel member as counsel of record, and the attorney may then remove the record from the Clerk's Office for his or her use until the appellant's brief is filed.

G. Duties of Appointed Counsel

Pro Bono Panel members must be reasonably available to accept assignments. Upon assignment to represent a client, a pro bono attorney shall provide representation in accordance with the Canons of Professional Responsibility and the provisions of this Plan.

Although Pro Bono Panel members may allow associates or law students to conduct research and perform other work on the assigned case, the attorney on the Panel to whom the case is assigned will remain the attorney of record and his or her name must appear on the appellate brief. This attorney must assume the ultimate responsibility for the brief submitted to the Court and all other aspects of the assigned case.

The Pro Bono Panel member assigned to the case shall appear for oral argument unless excused by the Court. Presentation of oral argument by an associate attorney or student not appointed under the Plan will be allowed only with permission of the Court except as provided in Local Rule 46(e).

If circumstances arise that require counsel to withdraw as counsel for the pro bono client, such a motion may be based on any of the established grounds for doing so.

The pro bono appointment includes only the handling of the appeal and the drafting of a petition for rehearing where requested by the client, but does not include the preparation and filing of a petition for certiorari in the Supreme Court or any other proceedings in any other court unless specifically requested by this Court. However, in the event of a decision on appeal adverse to the client, counsel shall promptly transmit to the pro bono client a copy of the Court's decision, and advise the client in writing of the right to file a petition for writ of certiorari with the United States Supreme Court and the procedures for filing a petition for a writ of certiorari *pro se*.

H. Fees, Costs and Expenses

Although pro bono counsel appointed by this Court are not compensated by the Court for fees, statutory attorneys' fees and costs are available to pro bono counsel to the same extent that they are available to retained counsel.

_____ Generally, costs and expenses are not reimbursable for cases accepted by pro bono counsel. Where costs and expenses, however, create an undue hardship for assigned counsel, counsel should contact the Director of Legal Affairs prior to incurring any such cost or expense. Some limited reimbursement might be available for pro bono counsel for whom undue hardship exists under the Court's Plan for Administration of Attorney Admission Fee Fund.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Application for Appointment to
the Pro Bono Panel

** Please attach to this application a current resume and three writing samples, preferably appellate briefs on which you were the prime author.

I. PERSONAL

Name _____

Firm Name/School/Organization _____

Office Address _____

E-mail _____ Fax No. _____

Office Telephone _____ Cell Phone _____

II. ADMISSION TO PRACTICE

Are you a member of the Bar of the Second Circuit? _____ Year Admitted _____

State Bar(s) _____ Year Admitted _____ ID No. _____

_____ Year Admitted _____ ID No. _____

Other Federal Bar(s) _____ Year Admitted _____

_____ Year Admitted _____

_____ Year Admitted _____

Are you a member in good standing of each of the Bars listed above? _____

If not, please list Bar(s) in which you are no longer in good standing and explain why. _____

Are you in compliance with the CLE requirements of those states where you are admitted to practice? _____. If not, please provide an explanation.

III. PREVIOUS APPELLATE EXPERIENCE

Have you had at least three years' experience in appellate work at either the state or federal level?

Please provide a short statement describing your experience in appellate work, e.g., the length of your experience and the subject matters and types of cases you have argued and the briefs you have prepared. _____

IV. PRIOR PRO BONO EXPERIENCE

Have you previously served on the pro bono panel of this Court? _____. If so, list the dates when you served and the cases you were assigned.

Have you been or are you presently a member of any other pro bono panel? _____. If so, list each such service, the dates of service and approximately how many cases you have been assigned.

Have you ever been removed from, or not renewed on, any pro bono panel? _____. If yes, state the reasons.

V. AREAS OF SPECIALITY/EXPERTISE

List any areas of practice in which you specialize or have developed an area of expertise.

☐ Immigration

☐ §1983/non-prisoner

☐ §1983/Prisoners' Rights

☐ Employment/Title VII

☐ Social Security

☐ Bankruptcy

☐ Tax

☐ Other _____

VI. SUPERVISION

Will you be performing the work on the case and preparing the brief yourself or will you be assigning the work to associates/students? _____

If you will be assigning the work to associates or students, please provide a statement describing the supervision process you will employ:

CERTIFICATION

Under the penalties of perjury, I certify that the information contained in this application including the attachments is true and accurate to the best of my knowledge.

I also certify that I understand that with the exception of the information contained in the "Personal and Confidential" Section of this Application, this application will not be confidential and will be kept as a public record with the Clerk of Court of the United States Court of Appeals for the Second Circuit.

Date

Applicant's Signature

Submit your application, resume, and three writing samples to:

Office of Legal Affairs
Thurgood Marshall United States Courthouse
40 Foley Square, Rm 612
New York, New York 10007